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BETWEEN PRECEDENT AND PERSONAL LIBERTY: JUDICIAL DISCIPLINE IN UAPA BAIL JURISPRUDENCE

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ABSTRACT

The stringent bail regime under the Unlawful Activities (Prevention) Act, 1967, particularly Section 43D(5), has generated significant constitutional and jurisprudential concerns concerning the balance between national security and personal liberty. The Supreme Court's decision in Union of India v. K.A. Najeeb recognised a constitutional safeguard against prolonged pre-trial incarceration where continued detention, coupled with the absence of a realistic prospect of an early trial, would implicate Article 21. Subsequent decisions, including Gurwinder Singh v. State of Punjab and Gulfisha Fatima v. State (NCT of Delhi), adopted approaches that raised questions regarding the practical scope of Najeeb. The controversy ultimately brought into sharper focus the relationship between judicial discretion, Bench strength and the binding force of precedent under Article 141 of the Constitution. Against this background, the paper critically examines Syed Iftikhar Andrabi v. National Investigation Agency, Jammu and evaluates whether a smaller Bench can, through interpretation or distinction, effectively dilute the ratio of a larger-Bench decision. It argues that while factual variation and judicial discretion remain integral to bail adjudication, institutional judicial discipline requires a smaller Bench either to follow the binding precedent or refer the issue to a larger Bench.

Keyword: UAPA Bail; Judicial Discipline; Article 141; Judicial Precedent

1. INTRODUCTION

1.1 Statutory Framework and the UAPA Bail Regime

The interplay between individual freedom and national security becomes notably intricate when judicial bodies evaluate bail requests under the Unlawful Activities (Prevention) Act, 1967 ("UAPA"). Section 43D(5) of the UAPA imposes a unique legal limitation on bail, mandating that the court, following a hearing with the Public Prosecutor, must be convinced that there are reasonable grounds to believe that the charges against the accused are prima facie unsubstantiated.[1] The rule so fundamentally modifies the conventional method of bail in criminal law and imposes a much increased burden on the defendant.

The Supreme Court's elucidation of this clause in *National Investigation Agency v. Zahoor Ahmad Shah Watali*[2] further solidified the constrictive character of the legal framework. The Court underscored that during the bail phase, judicial bodies should refrain from performing an exhaustive analysis of evidence or engaging in a mini-trial, thereby reinforcing the prosecution-centric standard established in Section 43D(5). This legal and judicial structure collectively designates UAPA bail as a deviation from the standard principle of freedom before trial.

1.2 Constitutional Intervention: K.A. Najeeb and Article 21

The constitutional issue emerges when extended imprisonment persists without a feasible likelihood of a prompt trial resolution. In the case of *Union of India v. K.A. Najeeb*, a three-Judge Bench acknowledged that the legal limitations imposed by Section 43D(5) cannot function independently of the constitutional assurance of personal liberty as enshrined in Article 21.[3] The Court determined that where extended imprisonment and the improbability of a swift trial render detention essentially punitive prior to conviction, constitutional courts may intervene despite the legal prohibition.

[1] Unlawful Activities (Prevention) Act, 1967, § 43-D(5).
[2] *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.
[3] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.

Significantly, *Najeeb* neither nullified Section 43D(5) nor determined that mere delay inherently grants an accused the right to bail. It acknowledged a constitutional safeguard that applies in extraordinary situations where ongoing incarceration would infringe against the essential right to life and personal freedom. The ruling thereby established a constitutional equilibrium within an otherwise rigid legal framework.

1.3 Post-Najeeb Jurisprudence and Emerging Divergence

The ensuing legal precedents have raised an institutional inquiry on the interpretation and implementation of the *Najeeb* principle. In *Gurwinder Singh v. State of Punjab*, a two-Judge Bench implemented a methodology necessitating the evaluation of the statutory criterion under Section 43D(5) prior to the application of the constitutional principle derived from Najeeb.[4] This sequencing effectively places the statutory bar at the forefront of the bail inquiry.

A comparable methodology then emerged in *Gulfisha Fatima v. State (NCT of Delhi),* wherein the Court once more prioritised the statutory threshold as a fundamental factor in evaluating bail applications.[5] The resultant legal disparity is considerable since Najeeb was adjudicated by a three-Judge Bench, while the subsequent rulings were issued by two-Judge Benches. The concern, consequently, transcends the merits of specific bail requests to encompass the institutional principles regulating judicial precedent and hierarchy.

1.4 Article 141 and the Doctrine of Judicial Discipline

Article 141 of the Constitution stipulates that the legal principles established by the Supreme Court are obligatory for all courts across India.[6] This constitutional directive engenders the principle of judicial discipline, necessitating that a lesser Bench adhere to the ratio established by a larger Bench or, if unable to comply, escalate the issue to a Bench of suitable authority.

In this context, a significant differentiation arises between accurately differentiating a precedent based on its specifics and successfully modifying its legal doctrine. The former is acceptable within the framework of judicial logic, whereas the latter prompts worries about institutional contradiction and doctrinal disunity. The current discourse in UAPA bail jurisprudence concerns not only interpretative discord but also the foundational stability of precedent as dictated by Article 141.

1.5 The Andrabi Intervention and the Institutional Question

In this context, the case of *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu,* adjudicated by a two-Judge Bench on 18 May 2026, holds substantial importance. The ruling explicitly tackled the issue that smaller Benches could gradually undermine the constitutional authority of a larger-Bench ruling without officially dissenting.[7] The Court's involvement with this matter highlights the institutional boundaries of judicial interpretation on binding precedent.

The ruling in Andrabi thus presents a significant opportunity to analyse the convergence of Section 43D(5), Article 21, Article 141, judicial discretion, and the hierarchy of the Bench. It poses a crucial inquiry: can judicial discretion in bail determinations influence the substantive essence of a broader-Bench finding via subsequent smaller-Bench verdicts?

1.6 Scope and Argument of the Paper

This article rigorously analyses the progression of UAPA bail jurisprudence from *Watali* and *Najeeb* to *Gurwinder Singh* and *Gulfisha Fatima*, concluding with Andrabi. It contends that whereas judicial discretion allows for varied outcomes in truly differing factual situations, such discretion cannot modify or bypass the ratio of a decision made by a larger bench.

Consequently, the article contextualises the dispute within the overarching constitutional tenet that judicial adaptability must function within, not beyond, the constraints of precedent established by Article 141. It argues that the validity of constitutional interpretation relies not solely on substantive logic but also on compliance with the institutional hierarchy of the Supreme Court.

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[4] *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403.
[5] *Gulfisha Fatima v. State (NCT of Delhi)*, 2026 SCC OnLine SC 10.
[6] INDIA CONST. art. 141.
[7] *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503 (SC, May 18, 2026).

2. REVIEW OF LITERATURE

The existing literature and judicial scholarship on UAPA bail jurisprudence may broadly be examined through five interconnected themes:

- **UAPA and the Exceptional Bail Regime:** Scholarly discussions on Section 43D(5) have primarily focused on the departure of the UAPA from ordinary bail principles and the restrictive interpretation adopted in *National Investigation Agency v. Zahoor Ahmad Shah Watali*.[8] The literature generally recognises the provision as creating a heightened threshold for an accused seeking bail, particularly in offences concerning terrorism and national security. The subsequent judicial debate, however, demonstrates that the statutory restriction cannot be examined independently of constitutional guarantees.
- **Personal Liberty and Prolonged Incarceration:** A significant body of constitutional jurisprudence has examined the relationship between prolonged pre-trial detention and Article 21. *Union of India v. K.A. Najeeb* represents the principal judicial intervention in this context, recognising that statutory restrictions on bail cannot completely exclude constitutional scrutiny where incarceration becomes disproportionately prolonged and the conclusion of trial remains uncertain.[9]
- **Judicial Precedent and Article 141:** Literature concerning judicial discipline emphasises that the binding force of Supreme Court precedent is not merely persuasive but constitutionally grounded in Article 141.[10] The central institutional proposition is that a Bench of lesser numerical strength ordinarily cannot disregard the ratio of a larger Bench and, where disagreement genuinely arises, the appropriate course is reference to a larger Bench. This principle has acquired particular significance in the post-*Najeeb* UAPA bail controversy.
- **Judicial Discretion and Divergent Bail Outcomes:** Existing jurisprudence also indicates that different bail outcomes do not necessarily amount to inconsistency. Decisions such as *Gurwinder Singh v. State of Punjab* demonstrate that *Najeeb* may be distinguished where the factual circumstances concerning the progress of trial, custody and likely sentence materially differ.[11] Subsequent decisions have similarly recognised that prolonged incarceration must be assessed in the factual context of each case.
- **Emerging Post-*Najeeb* Jurisprudence:** Recent decisions have brought the institutional dimension of the controversy into sharper focus. *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu* expressly questioned the ability of a smaller Bench to dilute or circumvent the ratio of *Najeeb*, while subsequent 2026 decisions have continued to treat *Najeeb* as binding authority in cases involving prolonged detention.[12]

3. RESEARCH GAP

The current dialogue has thoroughly investigated either the rigour of Section 43D(5) or the constitutional safeguards against extended imprisonment. Relatively minimal focus has been directed toward the institutional issue central to the current debate: whether a diminished Supreme Court Bench can, via interpretation or factual differentiation, significantly modify the practical application of a larger-Bench precedent without formally referring to a more robust Bench. This study aims to fill that void by analysing UAPA bail jurisprudence via the integrated perspectives of Article 21, Article 141, judicial discretion, and institutional judicial discipline.

4. RESEARCH OBJECTIVES

The present study is guided by the following objectives:

1. **To examine the statutory framework governing bail under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967**, with particular emphasis on the restrictive bail standard and its judicial interpretation.
2. **To analyse the evolution of Supreme Court jurisprudence on UAPA bail** from *National*

[8] *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.
[9] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
[10] INDIA CONST. art. 141.
[11] *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403.
[12] *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503 (SC, May 18, 2026).

Investigation Agency v. Zahoor Ahmad Shah Watali and *Union of India v. K.A. Najeeb* to *Gurwinder Singh v. State of Punjab*, *Gulfisha Fatima v. State (NCT of Delhi)* and *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*.

3. **To critically examine the relationship between judicial discretion, Article 141 of the Constitution and the doctrine of judicial discipline**, particularly where a smaller Bench interprets or distinguishes a principle declared by a larger Bench.

The study ultimately seeks to determine whether divergent outcomes in UAPA bail cases represent legitimate fact-sensitive judicial discretion or, in circumstances where the ratio of a larger Bench is effectively narrowed, raise concerns of institutional inconsistency and breach of precedential discipline.

5. HYPOTHESIS

The premise of this study posits that while judicial discretion allows for varied results in UAPA bail cases due to significantly different circumstances, a smaller Bench of the Supreme Court cannot, in accordance with Article 141 and the principle of judicial discipline, diminish or fundamentally change the ratio of a decision made by a larger Bench. When authentic discord occurs, the suitable constitutional procedure is to submit the issue to a more extensive Bench with adequate composition.

6. RESEARCH METHODOLOGY

The current research employs a doctrinal and analytical approach. It fundamentally depends on key legal materials, such as the Constitution of India, the Unlawful Activities (Prevention) Act of 1967, and pertinent rulings from the Supreme Court of India. Secondary sources, such as books, academic articles, and legal analyses, are employed to provide context for the evolution of jurisprudence. The research systematically evaluates legal statutes and court rulings to investigate the interplay of Section 43D(5), Article 21, Article 141, judicial discretion, and the principle of judicial discipline within UAPA bail jurisprudence.

7. STATUTORY FRAMEWORK: SECTION 43D(5) OF THE UAPA

The foundation for comprehending the debate on UAPA bail jurisprudence is in Section 43D(5) of the Unlawful Activities (Prevention) Act of 1967. The regulation imposes a unique limitation on the issuance of bail for individuals charged with crimes under Chapters IV and VI of the Act. It stipulates that, following the opportunity for the Public Prosecutor to present their case, the accused shall not be granted bail if the Court deems there are reasonable grounds to believe the charge is prima facie valid.[13] The stipulation thus diverges from the conventional tenets of bail by mandating the defendant to surpass a markedly elevated legal standard.

7.1 Nature of the Section 43D(5) Bail Bar

Section 43D(5) embodies a purposeful legislative reaction to the unique characteristics of crimes related to terrorism and actions deemed detrimental to national security. The legal framework operates under the assumption that conventional bail criteria may fall short in instances involving organised groups, delicate intelligence, and significant risks to national security.[14] The outcome indicates that the court's examination during the bail phase is considerably more stringent than in typical criminal jurisprudence.

The Supreme Court offered a definitive interpretation of this limitation in *National Investigation Agency v. Zahoor Ahmad Shah Watali.*[15] The Court determined that the phrase "prima facie true" necessitates an evaluation of whether the allegations, based on the evidence presented, seem to be prima facie plausible. The court is not obligated to perform a thorough analysis of the material or engage in a mini-trial during the bail phase. The prosecution thus enjoys a comparatively minimal evidence standard, whereas the defendant encounters a somewhat rigorous obstacle to liberation.

7.2 Legislative Restriction and Constitutional Liberty

The legal strictness of Section 43D(5) does not function entirely independently of constitutional

[13] Unlawful Activities (Prevention) Act, 1967, § 43-D(5).
[14] Statement of Objects and Reasons, Unlawful Activities (Prevention) Amendment Bill, 2008, Bill No. 93 of 2008.
[15] *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

protections. The limitation should be comprehended in conjunction with the inherent right to life and personal freedom as stipulated in Article 21 of the Constitution. This is especially important when a defendant is detained for an extended duration and the criminal proceedings appear unlikely to reach a resolution in a timely manner.

The constitutional aspect was later acknowledged in *Union of India v. K.A. Najeeb,* when the Supreme Court determined that the statutory limitation under Section 43D(5) cannot be construed to allow detention that essentially serves as punishment prior to conviction.[16] Consequently, whilst Watali delineates the rigorous legal benchmark, Najeeb presents a constitutional protection for extraordinary instances of extended pre-trial confinement.

Consequently, Section 43D(5) ought not to be regarded as a standard bail statute nor as a complete barring of constitutional judicial scrutiny. The interpretation necessitates a balance between the legislative aim of safeguarding national security and the constitutional dedication to individual freedom. This legal-constitutional connection establishes the basis for analysing the next jurisprudential dispute addressed in the future sections.

8. *K.A. NAJEEB* AND THE CONSTITUTIONAL BAIL EXCEPTION

The ruling in *Union of India v. K.A. Najeeb* holds a crucial role in shaping UAPA bail jurisprudence as it acknowledged that the rigorous statutory limitation in Section 43D(5) cannot function autonomously without constitutional protections. The ruling did not nullify the legal requirement; instead, it affirmed that statutory limitations on bail must be evaluated against constitutional standards when ongoing detention jeopardises the essential right to personal freedom as outlined in Article 21.[17]

8.1 Facts and Holding

In Najeeb, the defendant was detained for an extended duration since the trial exhibited minimal likelihood of reaching a timely conclusion. The prosecution's case encompassed a considerable array of witnesses, however only a small fraction of the evidence had been scrutinised. In light of this context, the Supreme Court evaluated if the legal prohibition under Section 43D(5) might warrant ongoing detention notwithstanding the exceptional length of confinement.

A three-Judge Bench determined that constitutional courts have the authority to grant bail when extended imprisonment, along with the improbability of a swift trial, renders ongoing detention constitutionally intolerable. The Court acknowledged that an individual facing charges cannot endure punishment prior to a conviction only due to the rigorous legislative requirements for bail. The constitutional assurance provided by Article 21 thus functions as a crucial protection against prolonged pre-trial incarceration.

8.2 Article 21 as a Constitutional Safety Valve

The importance of Najeeb resides in its harmonisation of legal limitations with constitutional freedom. Section 43D(5) continues to be in effect, and the prosecution is not obligated to meet the usual criteria for bail as dictated by general criminal law. Nonetheless, the legal limitation should not be construed as entirely precluding constitutional authority.

The Court's rationale is especially significant as extended imprisonment can take on a punitive nature if the trial is improbable to finish in a timely manner. Under these conditions, ongoing imprisonment may be deemed excessive in relation to the valid aim of ensuring the accused's attendance at trial. Article 21 thus offers a constitutional safeguard that enables courts to avert the unfair loss of liberty resulting from the statutory bail limitation.

8.3 The Cumulative Nature of the Najeeb Principle

It is crucial, therefore, not to simplify Najeeb's situation to the assertion that postponement of trial invariably leads to bail. The determination hinges on an evaluation of extraordinary conditions, notably the extended imprisonment and the lack of a feasible chance for a prompt trial resolution. The duration of custody must therefore be assessed in connection with the nature of the accusations, the advancement of the legal

[16] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.

[17] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.

proceedings, and the anticipated length of the trial.

This distinction is essential to the subsequent legal debate. Najeeb does not establish a separate legal right to bail solely due to a postponement of the trial. Similarly, its basic tenet cannot be rendered effectively insignificant by regarding Section 43D(5) as an unconditional impediment in all instances. The ruling thus creates a meticulously calibrated stance: the legal framework serves as the foundation, whereas constitutional freedom imposes an upper boundary on the allowable length of pre-trial incarceration.

9. FROM *GURWINDER SINGH* TO *GULFISHA FATIMA*: DIVERGENT APPROACHES

The legal principles emerging from *Union of India v. K.A. Najeeb* indicate a significant discrepancy in reconciling lengthy detention, Section 43D(5) of the UAPA, and Article 21. The contention is not merely regarding whether a delay might warrant bail; instead, it pertains to the legal stance that Najeeb formulated and the degree to which a later Bench may alter that concept.

9.1 Gurwinder Singh: Statutory Threshold as the First Inquiry

In *Gurwinder Singh v. State of Punjab,* a two-Judge Bench regarded Section 43D(5) as a rigorous and autonomous constraint on the typical authority to issue bail.[18] The Court established a "twin-prong" methodology wherein the statutory prima facie criterion was to be evaluated initially, with standard bail factors examined only if the statutory benchmark was met. The Court further differentiated Najeeb on the grounds that the proceedings were still ongoing.

The importance of *Gurwinder Singh* resides in the organization of the investigation. It recognised *Najeeb* but prioritised the legal prohibition, viewing the constitutional issue of extended detention as functioning within that context. This resulted in a more limited practical comprehension of the *Najeeb* exemption.

9.2 Gulfisha Fatima: Contextual Application of Article 21

The methodology was then evaluated in *Gulfisha Fatima v. State (NCT of Delhi).*[19] The Court acknowledged that extended imprisonment engages Article 21, yet ruled that the length of detention alone cannot dictate the right to bail. It analysed the responsibilities assigned to the defendant, the characteristics of the evidence utilised, the phase and advancement of the trial, and the factors leading to postponement. Bail was approved for five appellants, however two others were denied bail as their ongoing incarceration did not, according to the Court's records, surpass the constitutional threshold of unacceptability.

Consequently, *Gulfisha Fatima* varied from *Gurwinder Singh* in focus, yet generally maintained its limiting interpretation of Najeeb. *Gurwinder Singh* emphasised the legal benchmark, whereas *Gulfisha Fatima* presented a more overtly contextual examination of Article 21. Nonetheless, both rulings dismissed the assertion that extended imprisonment, seen independently, necessitates automatic release.

9.3 Najeeb, Gurwinder Singh and Gulfisha Fatima: The Critical Comparison

The differentiation becomes more apparent when the three choices are compared side by side. Najeeb regarded Section 43D(5) as constrained by constitutional restrictions and acknowledged that its "stringencies" might diminish when extended detention is accompanied by a lack of a feasible chance for a prompt trial resolution.[20] *Gurwinder Singh,* in contrast, underscored the legal prima facie standard prior to addressing further bail factors. *Gulfisha Fatima* subsequently emphasised that *Najeeb* ought not to be reduced to a mathematical principle where the simple elapse of time dictates bail.[21]

The essential organisational differentiation, however, is Bench strength. The case of *Najeeb* was adjudicated by a three-Judge Bench, whereas the rulings concerning *Gurwinder Singh* and *Gulfisha Fatima* were made by two-Judge Benches. This is important as *Andrabi* subsequently asserted that the latter rulings had strayed from the principles established in *Najeeb*, and that a smaller Bench could not undermine, bypass, or

[18] *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403.
[19] *Gulfisha Fatima v. State (NCT of Delhi)*, 2026 SCC OnLine SC 10.
[20] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
[21] *Gulfisha Fatima v. State (NCT of Delhi)*, 2026 SCC OnLine SC 10.

ignore the authoritative law set down by a bigger Bench.[22]

Thus, the dispute does not pertain to whether *Gurwinder Singh* or *Gulfisha Fatima* had the right to interpret the facts in a divergent manner. They evidently held that judicial role. The fundamental inquiry is whether their interpretation modified the legal structure set forth by *Najeeb.* The differentiation between allowable factual variation and unacceptable alteration of precedent so becomes crucial. The institutional inquiry underpins the Article 141 examination in the subsequent section.

10. ARTICLE 141 AND JUDICIAL DISCIPLINE: THE SIGNIFICANCE OF *ANDRABI*

The disparity in UAPA bail jurisprudence finally prompts an inquiry that transcends the interpretation of Section 43D(5): the constitutional significance of precedent inside the Supreme Court. Article 141 of the Constitution stipulates that the legal principles established by the Supreme Court are obligatory for all courts across India.[23] The clause thereby endows constitutional authority to the principle of precedent and strengthens the institutional necessity for court rulings to function within a consistent hierarchical structure.

10.1 Article 141 and the Hierarchy of Benches

The doctrine of judicial discipline mandates that a panel with fewer members adhere to the precedent established by a panel with a larger composition. When a smaller Bench perceives that a prior ruling necessitates reevaluation, the suitable action is not to dismiss or significantly alter it, but rather to submit the issue to a bigger Bench.[24] This tenet safeguards the consistency of legal frameworks and the institutional power of the Supreme Court.

The importance of Bench strength is very apparent in the current dispute. *K.A. Najeeb* was adjudicated by a panel of three judges, while *Gurwinder Singh* and *Gulfisha Fatima* were resolved by panels of two judges.[25] The concern, consequently, is not solely if the subsequent Benches embraced a divergent factual evaluation, but if they modified the legal doctrine established by the bigger Bench.

10.2 The Ratio of Najeeb

The primary assertion put out by Najeeb is that Section 43D(5) does not entirely negate the constitutional authority of courts to grant bail where extended detention and the lack of a feasible chance for a prompt trial lead to a violation of Article 21.[26] The legal embargo, therefore, cannot serve as the exclusive basis for ongoing detention when pre-trial imprisonment starts to take on a punitive nature.

This differentiation is essential. The actual result in *Najeeb* is not inherently obligatory for all future bail requests. Subsequent Benches are bound by the legal norm established by the three-Judge Bench. A subsequent court is at liberty to determine that the factual criteria of that principle have not been satisfied in a specific instance. It is incapable of transforming that factual differentiation into an alteration of the prevailing legal principle.

10.3 The Andrabi Intervention

In *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu,* the Supreme Court clearly addressed this systemic issue. The two-Judge Bench noted that *Gurwinder Singh's* refusal to adhere to the concept established in *Najeeb* was challenging to accept as a precedent, given that a smaller Bench is obligated to respect the rulings of a bigger Bench.[27] The Court underscored that judicial discipline necessitates adherence to precedent or, in cases of dissent, submission to a larger Bench.

The Court additionally determined that the "twin-prong test" established in *Gurwinder Singh* was not derived from the language of Section 43D(5) or from *Najeeb.* In its evaluation, considering the fulfilment of the statutory prima facie criterion as

[22] *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503 (SC, May 18, 2026).
[23] INDIA CONST. art. 141.
[24] *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1955 SC 661 : (1955) 2 SCR 603; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.
[25] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713; *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403; *Gulfisha Fatima v. State (NCT of Delhi)*, 2026 SCC OnLine SC 10.
[26] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
[27] *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503 (SC, May 18, 2026).

a definitive barrier to constitutional bail could jeopardise the efficacy of the *Najeeb* protection. The Court thus reiterated that the constitutional examination under Article 21 can proceed despite the legal prohibition when the conditions of extended imprisonment warrant intervention.

10.4 The Institutional Significance

The importance of *Andrabi* is not solely in its provision of bail but in its reinforcement of the institutional hierarchy of legal precedent. The ruling clarifies that judicial discretion on bail does not empower a smaller Bench to reinterpret the principles established by a bigger Bench. In instances of authentic dissent, institutional coherence necessitates citation instead than unilateral changes to doctrine.

The dispute illustrates that judicial discipline does not require uniform results; it necessitates adherence to the prevailing legal doctrine. The implementation of Najeeb may justifiably differ based on circumstances, although its constitutional principle cannot be undermined just by repeated rulings from lesser Benches.

11. CRITICAL ANALYSIS: PRECEDENT, DISCRETION AND PERSONAL LIBERTY

The prior legal precedents indicate that the dispute cannot be settled just by selecting between Section 43D(5) and Article 21. The more essential matter pertains to the boundaries within which judicial discretion can function when a bigger Bench has previously established the relevant constitutional concept. The doctrine surrounding UAPA bail necessitates a meticulous differentiation between valid judicial evaluation and unacceptable modification of established precedent.

11.1 Judicial Discretion Is Not Judicial Freedom from Precedent

Bail is fundamentally a matter of discretion. Judicial bodies are required to take into account the specific context of the defendant, the characteristics of the charges, the evidence presented by the prosecution, the advancement of the trial, and the likelihood of ongoing detention. Thus, two tribunals adhering to the same legal doctrine may validly arrive to divergent outcomes based on significantly different circumstances. Najeeb did not define a specific duration of custody after which bail would be granted automatically.[28]

Judicial discretion, therefore, functions within the confines of obligatory legislation. A court can assess if the circumstances acknowledged in Najeeb are present in a specific instance, although it cannot alter those conditions in a way that significantly undermines the constitutional protection itself. The differentiation lies between the implementation of precedent and the modification of precedent.

11.2 Distinguishing Precedent versus Modifying Precedent

The primary challenge resides in discerning when an alleged factual difference transforms into a significant alteration of legal principles. A valid differentiation assesses if the factual circumstances of the subsequent case fulfilll the criteria set by the prior ruling. It does not alter the regulation itself.

In the current situation, a judge may justifiably determine that a defendant has not undergone adequate extended imprisonment, that the trial is likely to be resolved within a reasonable timeframe, or that other factors warrant ongoing detention. This line of thought persists within Najeeb. The issue emerges when the legal benchmark set by Section 43D(5) is regarded as an unequivocal prerequisite for activating the constitutional protection, thereby rendering the constitutional exception largely inaccessible in instances where the statutory criterion is not independently met. The inquiry, therefore, is not if subsequent courts might contest the outcome of Najeeb, but whether they might reformulate its ratio.

11.3 Balancing National Security and Personal Liberty

The rigorous UAPA framework embodies valid apprehensions regarding terrorism and national security. Judicial bodies must not overlook the legislative intent that informs Section 43D(5). Simultaneously, national security must not convert pre-trial detention into a kind of punishment absent a conviction. The

[28] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.

constitutional duty is thus one of harmonisation rather than unequivocal favouritism.

A judicious methodology necessitates that the court uphold the legal presumption favouring rigorous examination while concurrently assessing if ongoing imprisonment has become constitutionally excessive. This method honours both legislative procedure and Article 21. *Andrabi* is important as it underscores the notion that the legislative framework should adhere to constitutional constraints rather than function as an autonomous exclusion of them.[29]

11.4 Is Andrabi the Correct Institutional Response?

From the perspective of judicial hierarchy, *Andrabi* offers a persuasive institutional solution to precedential inconsistency. When a smaller Bench believes that a prior bigger-Bench ruling has been misinterpreted or that its ratio necessitates reevaluation, the appropriate action is to submit the matter to a larger Bench instead of making unilateral doctrinal changes.[30]

Nonetheless, Andrabi ought not to be seen as abolishing judicial discretion in UAPA bail matters. Its importance is in preserving the differentiation between the discretion exercised in enforcing the law and the power to amend the law. The former constitutes a vital judicial role; the latter must adhere to the institutional structure dictated by precedent.

The dispute so demonstrates that judicial discipline and individual freedom are not opposing constitutional principles. When comprehended correctly, judicial discipline defends freedom by guaranteeing that constitutional protections are not erratically broadened, restricted, or replaced based on the makeup of specific Benches. The soundness of UAPA bail jurisprudence fundamentally relies on maintaining this equilibrium: varying circumstances may warrant diverse conclusions, yet distinct Benches cannot formulate disparate legal principles solely by reinterpreting precedent.

12. FINDINGS AND SUGGESTIONS

The preceding analysis reveals that the principal difficulty in UAPA bail jurisprudence lies not merely in the stringency of Section 43D(5), but in maintaining doctrinal consistency while reconciling national-security concerns with constitutional liberty. The following findings and suggestions emerge:

First, *K.A. Najeeb* establishes that statutory restrictions on bail cannot completely exclude the constitutional protection of personal liberty under Article 21. Prolonged incarceration, particularly where there is no realistic possibility of an early conclusion of trial, may therefore justify constitutional intervention notwithstanding Section 43D(5).[31]

Second, judicial discretion permits different bail outcomes where the factual circumstances materially differ. However, factual distinction should not become a device for altering the governing legal principle laid down by a larger Bench.

Third, the approaches adopted in *Gurwinder Singh* and subsequently examined in *Andrabi* demonstrate the need for greater doctrinal clarity regarding the relationship between the statutory threshold under Section 43D(5) and constitutional scrutiny under Article 21.[32]

Accordingly, the Supreme Court should formulate clearer parameters for evaluating prolonged incarceration, progress of trial, number of witnesses remaining, responsibility for delay, and the realistic possibility of completion of proceedings. No rigid mathematical period of detention should, however, substitute an individualised constitutional assessment.

Most importantly, where a smaller Bench considers a larger-Bench precedent unsuitable or requiring reconsideration, **judicial discipline demands reference to a Bench of appropriate strength rather than its indirect dilution through reinterpretation**.[33] Such an approach

[29] *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503 (SC, May 18, 2026).
[30] *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1955 SC 661 : (1955) 2 SCR 603; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.
[31] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
[32] *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403; *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503.
[33] *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503; *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1955 SC 661 : (1955) 2 SCR 603.

would preserve both decisional flexibility and the institutional certainty required by Article 141.